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## CHAPTER 15

### STATEWIDE WATER QUALITY MANAGEMENT PLANNING

#### SUBCHAPTER 6: WATER QUALITY LIMITED SURFACE WATERS

##### **7:15-6.1 Purpose and scope**

This subchapter describes the process which is used to identify water quality limited segments or waterbodies, identify those segments or waterbodies requiring the development of TMDLs or other actions and to set the priorities for development of the necessary TMDLs or other actions. The procedures in this subchapter and the adoption of waterbody segment lists shall supersede any existing listing of water quality limited segments or effluent limited segments in areawide WQM Plans and any other Departmental documents other than the Statewide WQM Plan.

##### **7:15-6.2 Identification of water quality limited segments**

(a) The Department shall identify those water quality limited segments where it is known that the water quality does not meet or is not expected to meet the applicable surface water quality standards in N.J.A.C. 7:9B, or surface water quality standards adopted by the USEPA for the State, subsequent to imposition and implementation of the controls in (a)1 through 4 below. Where the segments are known to not meet the applicable surface water quality standards, the segments shall be listed until the controls of (a)1 through 4 below and the implementation of a TMDL or other action result in the segment meeting the applicable surface water quality standards:

1. Technology based effluent limitations required by Sections 301(b), 306, 307, or other sections of the Federal Act and established pursuant to N.J.A.C. 7:14A-13.2, 13.3 and 13.4;
2. Effluent standards, limitations or prohibitions that are more stringent than technology based effluent limitations, as required by local, State or Federal law, regulation or treaty, including effluent limitations imposed in accordance with N.J.A.C. 7:14A-12, effluent limitations imposed in accordance with N.J.A.C. 7:14A-13.2 and 13.3 which are based on water quality management plans adopted in accordance with N.J.A.C. 7:15, or State minimum treatment requirements and effluent standards in N.J.A.C. 7:14A-12 and N.J.A.C. 7:9-5;
3. Other pollution control requirements, such as best management practices in accordance with N.J.A.C. 7:14A-6.2(b)1, required by local, State or Federal law, regulation or treaty; and
4. Site specific allocations and site specific water quality based effluent limitations (in the absence of a TMDL) for any pollutant or pollutant parameter for which water quality

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based effluent limitations are required to be developed in accordance with N.J.A.C. 7:14A-13.5.

(b) The Department shall identify those water quality limited segments for which controls on thermal discharges under Section 301 of the Federal Act, or site specific requirements such as provided for in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.14(c)11 are not stringent enough to ensure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(c) The Department shall prepare a list of those water quality limited segments identified in accordance with (a) and (b) above. The list shall identify the boundaries of the water quality limited segments and the pollutants or pollutant parameters causing or expected to cause violations of the surface water quality standards in N.J.A.C. 7:9B. The list may include information regarding proposed approaches for the development of TMDL models for the identified water quality limited segments. The list shall include, to the extent known through information available to the Department, potential causes or sources of the violation of surface water quality standards, including specific or general categories of pollutant sources.

(d) The Department shall use the most recently listing of WQLS adopted by the Department and approved by the USEPA as the basis for a new WQLS listing, and such WQLS shall continue to be considered WQLS unless specifically deleted with data and justification as described in (e) below. The Department may list new WQLS, also with data and justification as described in (e) below.

(e) The Department may utilize all or any of the following data sources in preparing the list described in (c) above:

1. Ambient surface water quality and flow data collected by an applicant or permittee in accordance with a QA/QC project work plan approved under N.J.A.C. 7:14A-2.12, or for which appropriate QA/QC procedures existed, were followed and can be verified;
2. Ambient surface water quality and flow data collected by the Department or by another government agency for which appropriate QA/QC procedures existed, were followed and can be verified;
3. Effluent quality and flow data, and permitted effluent quality and flow data, such as those submitted to the Department in compliance with monitoring or site-specific water quality study requirements of the NJPDES rules at N.J.A.C. 7:14A;
4. Any additional data which the Department may identify as applicable pursuant to 40 CFR 130.7(b)(5); or
5. Other data not included in (e)1 through 4 above, for the purpose of supporting conclusions otherwise based on data from (e)1 through 4 above or for the purpose of

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identifying segments pursuant to (f) below for which further investigation is appropriate prior to determining whether or not the segment is a WQLS.

(f) The Department may identify and include on the list described in (c) above additional waterbody segments for which data regarding impairment or non-attainment of surface water quality standards are incomplete or inconclusive but for which data are sufficient to warrant further investigation.

### **7:15-6.3 Ranking of water quality limited segments**

(a) The Department shall rank all water quality limited segments listed pursuant to N.J.A.C. 7:15-6.2(c). The ranking system shall incorporate the following considerations:

1. The relative number, locations, NJPDES permit expiration dates, and types of existing and anticipated point source discharges, and immediate NJPDES permit program needs such as wasteload allocations (WLAs) for permits;
2. The severity of the water quality impairment or potential impairment of the waterbody segment, including risks to human health and aquatic life, vulnerability or fragility of a particular segment as an aquatic habitat, or water pollution problems identified by the Department;
3. The extent to which water quality impairment or the threat of impairment is expected or projected to increase in the absence of further discharge controls;
4. The extent and types of existing and anticipated nonpoint discharges, including immediate nonpoint source control program needs for individual or aggregate load allocations (LAs) regarding such sources, which may support the implementation of best management practices (BMPs); and
5. The designated uses of the waterbody segment established in N.J.A.C. 7:9B-1 as well as existing uses, degree of public interest and support or the recreational, economic, and aesthetic importance of a particular waterbody segment;
6. The quality, quantity and extent of available data in determining whether a waterbody segment shall be included on the list; and
7. For purposes of this subchapter and N.J.A.C. 7:15-7, stormwater point sources shall, in general, be considered as nonpoint sources. However, a stormwater point source may be treated as a point source if:
  - i. There is a continuous, or regular and frequent, discharge from that stormwater point source in non-storm periods (more than three days after precipitation or the melting of frozen precipitation ends);
  - ii. The Department determines that the discharge in non-storm periods is a significant contributor of pollutants. In making this determination, the Department may consider the

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location of the discharge with respect to waters of the State, the size and frequency of the discharge, the quantity and nature of pollutants being discharged, the quality of the receiving waters, and other relevant factors; and

iii. The Department determines that the development of numeric effluent limitations may be feasible for the discharge.

(b) The Department shall identify those waterbody segments targeted for development of a TMDL during the two years subsequent to the adoption of the list in accordance with N.J.A.C. 7:15-6.4.

#### **7:15-6.4 Public process**

(a) The waterbody segment list described in N.J.A.C. 7:15-6.2 and N.J.A.C. 7:15-6.3, including the relative rank of each water quality limited segment, shall be adopted as an amendment to the Statewide WQM Plan in accordance with (c) through (g) below.

(b) The Department may also adopt as an amendment to the Statewide WQM Plan in accordance with (c) through (g) below, or otherwise publish for public comment, sublists of waterbody segments which fall into the following categories:

1. Waterbody segments for which data will be collected during the two years following adoption of the list, including the parameters to be addressed;
2. Waterbody segments for which a TMDL will be developed during the two years following adoption of the list, including the parameters to be addressed and the proposed approach for the TMDL model to be developed;
3. Waterbody segments for which NJPDES discharge permits based on a TMDL will be developed during the two years following adoption of the list, including the parameters to be addressed; and
4. Waterbody segments for which the TMDL/WLA/LA process, including issuance of NJPDES discharge permits as appropriate, has been completed since the last adoption of the waterbody segment list. This component of the list shall specify the parameters that have been addressed.

(c) The lists described in (a) and (b) above shall be subject to public comment. The Department shall provide public notice and a summary of the listed waterbody segments in the New Jersey Register and in a daily or weekly newspaper of general circulation within the affected area(s). The Department shall send copies of the public notice to the applicable designated planning agency or agencies, if any, the USEPA, adjacent affected states where appropriate, any individual sources of pollutants or use impairments included within the WQLS list and applicable agencies or individuals identified in accordance with N.J.A.C. 7:14A-15.10(e). The Department shall provide documentation to the Regional Administrator of the USEPA in accordance with 40 CFR 130.7(b)6.

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(d) Public notice shall include the following:

1. The name and address of the Bureau or Office in the Department from which the complete listing may be obtained and to which comments may be addressed;
2. A summary of listed waterbody segments and relevant parameters to be addressed in the TMDLs; and
3. A brief description of the procedures for comment on the waterbody segments lists, the parameters to be addressed in the TMDL, and the proposed TMDL approach.

(e) Interested persons may submit written comments to the Department within 30 days of the date of the public notice. Interested persons may request that the public comment period be extended up to 30 additional days. Requests for extensions to the comment period shall be submitted in writing to the Department within 30 days of the date of the public notice and specify a rationale for the extension. If the Department determines that there is sufficient cause for an extension based upon the request, it may grant the extension for 30 days or any shorter period as it deems appropriate.

(f) Interested persons may request that the Department hold a non-adversarial public hearing. Such requests shall be submitted in writing to the Department within 30 days of the date of the public notice and specify a rationale for the hearing. If the Department determines there is significant public interest in holding a public hearing, then a public hearing will be held. A public notice providing at least 30 days notice of the hearing will be published in a daily or weekly newspaper of general circulation within the affected area and mailed to the applicable designated planning agency or agencies, if any, as well as to any person who submitted comments in response to the original public notice. The public comment period shall automatically be extended to 15 days after the public hearing unless a later date is specified in the public notice.

(g) The Commissioner shall render a decision on the proposed list(s) which shall be deemed final agency action. The Commissioner shall either:

1. Adopt the list(s) as proposed, in part or in whole.
2. Adopt the proposed list(s) with minor changes which do not effectively destroy the value of the public notice; or
3. Disapprove the proposed list(s), in part or in whole.